## **SENATE, No. 2402**

[Senate, April 27, 2010 –New draft reported from the committee on <u>Ways and Means</u> for Senate, No. 1869.]



## The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

## AN ACT RELATIVE TO THE DISPOSITION OF MUSEUM PROPERTY.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

- SECTION 1. The General Laws are hereby amended by inserting, after chapter 200A, the
- 2 following chapter:-
- 3 CHAPTER 200B. Disposition of Museum Property
- 4 Section 1. As used in this chapter, the following words shall, unless the context clearly requires
- 5 otherwise, have the following meanings:-
- 6 "Claimant", a person, other than the lender, who claims to be legally entitled to, or who
- 7 establishes legal entitlement to, property held by a museum.

8	"Lender", a person who loans property to a museum and whose name appears in the
9	museum's records as the person legally entitled to the property held by the museum.
10	"Loan", a deposit of property with a museum for a specified period of time, that is not
11	accompanied by a transfer of title to the property or other evidence of donative intent; but does
12	not include a consignment of property for sale.
13	"Museum," an institution or entity located in the commonwealth that:
14	(i) is operated by a nonprofit corporation, trust, association, public agency or
15	educational institution;
16	(ii) is operated primarily for educational, scientific, historic preservation, cultural or
17	aesthetic purposes; and
18	(iii) owns, borrows, cares for, exhibits, studies, archives or catalogues property.
19	The word, "museum" shall include, but shall not be limited to, historical societies,
20	historic sites, landmarks, parks, archives, monuments, botanical gardens, arboreta, zoos, nature
21	centers, planetaria, aquaria, libraries, technology centers and art, history, science and natural
22	history museums.
23	"Person", an individual, association, partnership, corporation, trust, estate or other entity
24	having a legal interest in property in the custody of a museum.
25	"Property", tangible objects, animate or inanimate, in the custody of a museum.
26	"Undocumented property", property:
27	(i) that is held by a museum;

28	(ii) that is assumed to be a gift to the museum; and
29	(iii) whose ownership cannot be determined by reference to the museum's records.
30	Section 2. (a) A notice to a lender or claimant under this chapter shall contain:
31	(1) the lender's or claimant's name, if known;
32	(2) the lender's or claimant's address, if known;
33	(3) a description of the property on loan to the museum;
34	(4) the date of the loan, if known, or the approximate date the property came into
35	the custody of the museum;
36	(5) the name of the museum; and
37	(6) the name, address and telephone number of the appropriate museum official or
38	office to be contacted regarding the property.
39	(b) A notice mailed to a lender or claimant under this chapter shall be sent by certified
40	mail, return receipt requested, to the lender's or claimant's address. Notice shall be deemed to
41	have been provided if the museum receives, within 60 days of mailing the notice to the lender or
42	claimant a return receipt indicating a completed delivery to the lender's or claimant's address.
43	The date of a notice provided under this subsection shall be the date of delivery to the lender's or
44	claimant's address, as identified in the return receipt.
45	(c) If notice to a lender or claimant is not given in accordance with subsection (b), or if,
46	after a diligent search of its records, a museum does not know or cannot determine the lender's

47	or claimant's identity or address, notice may be given by publication, in which case notice shall
48	be published:
49	(1) at least once per week for 3 successive weeks in a newspaper of general
50	circulation in the county or municipality in which the museum is located; and
51	(2) if the museum has in its records the lender's or claimant's address, at least
52	once per week for 3 successive weeks in a newspaper of general circulation in the county
53	or municipality in which the lender or claimant is located.
54	For purposes of this chapter, the date of notice given under this subsection shall be the
55	date of the last published notice under either clause (1) or (2), whichever occurs later.
56	Section 3. (a) Unless a written loan agreement provides otherwise, a museum may apply
57	conservation measures to, or dispose of, undocumented property or property on loan to the
58	museum without the lender's or claimant's permission or notice to the lender or claimant if:
59	(1) immediate action is required to protect the undocumented property or property on
60	loan; or
61	(2) the property on loan has become a hazard to the health and safety of the public or to
62	the museum's staff, and if at least 1 of the following applies:
63	(i) the property poses an immediate risk of harm to the museum's staff or
64	collection or to the general public, in which case the museum may dispose of the property
65	without delay and shall notify the lender or claimant of the action taken within 30 days;
66	(ii) the museum is unable to reach the lender or claimant at the lender's or
67	claimant's address or phone number and is required to take action within 30 days; or

68	(iii) the museum contacts the lender or claimant and the lender or claimant does
69	not agree to the protective measures the museum recommends and does not, or is unable
70	to, terminate the loan and collect the property within the time the museum determines the
71	action is necessary.
72	(b) Unless a written loan agreement provides otherwise, a museum that applies
73	conservation measures to or disposes of loaned property in accordance with subsection (a) shall:
74	(1) acquire and may enforce a lien on the loaned property in the amount of the costs
75	incurred by the museum;
76	(2) not be liable to the lender or claimant for damage to, or loss of, the loaned property so
77	long as the museum had a reasonable belief at the time the action was taken that the
78	action was necessary; and
79	(3) if the museum applied conservation measures, not be liable to the lender or claimant
80	for damage to, or loss of, the loaned property so long as the museum exercised reasonable
81	care in choosing and applying such conservation measures.
82	Section 4. (a) Unless a written loan agreement provides otherwise, a museum may give
83	notice of the museum's intent to terminate a loan of property at any time if:
84	(1) the property was loaned to the museum for an indefinite term; or
85	(2) the property was loaned to the museum for a specified term and the term has expired.
86	(b) A mailed notice of intent to terminate a loan shall comply with subsection (b) of
87	section 2, and shall include the following statement: "The records of (name of museum) indicate
88	that you have property on loan to it. The museum hereby terminates the loan. If you desire to

claim the property, you must contact the museum, establish your ownership of the property, and make arrangements to collect the property. If you fail to do so within 1 year after the date on which this notice was delivered, you will be considered to have donated the property to the museum and the museum will become the owner of the property."

(c) If a lender or claimant does not respond to a notice of intent to terminate a loan under this chapter and does not collect the property within 1 year from the date of the notice the museum shall acquire title to the property and may sell, dispose of or retain the property.

Section 5. Property in the possession of a museum for which the museum does not know, and has no reasonable means of determining, the identity of the lender or claimant shall become the property of the museum if no person has claimed the property within 7 years after the museum can document the museum's possession of the property. The museum shall become the owner of the property free from all claims on the day after the 7-year period ends. This section shall not apply to stolen or confiscated property.

Section 6. (a) Unless a written loan agreement exists between the parties, no action for damages shall be brought against a museum or the museum's employees, agents, officers or trustees because of injury, damage to or loss of property loaned to the museum more than 2 years after the date the museum provided notice to the lender or claimant of the damage or loss.

(b) No action shall be brought against a museum or the museum's employees, agents, officers or trustees to recover loaned or undocumented property more than 2 years after the date the museum provides notice to the lender or claimant of the museum's intent to terminate a loan or the museum's assertion of title to undocumented property.

(c) No action shall be brought against a museum or the museum's employees, agents, officers or trustees to recover loaned property more than 2 years after the expiration date of the most recent written contract between the lender or claimant and the museum.

- (d) A lender or claimant shall be deemed to have donated loaned property to a museum if the lender or claimant fails to contact the museum and establish the lender's or claimant's claim to the property after receiving notice of the museum's intent to claim title to the property or dispose of the property or fails to file an action to recover the loaned property within the periods specified in subsections (b) and (c).
- (e) A person who purchases property from a museum shall acquire title to the property if, prior to the person's purchase, the museum acquired title to the property under this chapter.
- (f) Notwithstanding subsections (d) and (e), a lender or claimant who has not received notice of intent to terminate a loan or notice of the museum's assertion of title to undocumented property and who proves that the museum received satisfactory notice of interest in the property under subsection (b) of section 7, may recover the property or, if the property has been disposed of, the reasonable value of the property at the time the museum disposed of the property.
- (g) If a person claims a competing interest with a second person in property loaned to a museum, the burden shall be on the person claiming the competing interest to prove such person's interest in the property. A museum shall not be liable for the return of property to a claimant who has produced reasonable proof of ownership if, at the time the museum returned the property, the claimant's claim was uncontested.
- Section 7. (a) (1) A museum accepting a loan of property shall inform the lender, in writing, of the provisions of this chapter at the time the loan is made. A copy of this chapter or a

132	citation to this chapter within the loan agreement shall satisfy the requirements of this
133	subsection.
134	(2) A museum shall notify a lender or claimant of the museum's change of
135	address or dissolution.
136	(3) A museum shall retain all written records regarding property acquired under
137	this chapter for at least 10 years from the date that the museum acquired title to the
138	property or until the dissolution of the museum, whichever occurs first.
139	(b)(1) A lender, a lender's heir or legal agent, or a claimant shall notify the museum
140	promptly, in writing, of a change in ownership of loaned property or if there is a change in the
141	name or address of the lender or claimant.
142	(2) A lender or claimant may file with a museum a written notice of interest in the
143	property held by the museum. A notice of interest in the property shall:
144	(i) contain an adequate description of the property to enable the museum
145	to identify the property;
146	(ii) be accompanied by documentation sufficient to establish the lender or
147	claimant as the owner of the property; and
148	(iii) be signed under penalty of perjury by the lender or claimant, or by a
149	person authorized to act on behalf of the lender or claimant.
150	Section 8. This chapter shall not be construed to abrogate the rights and obligations of a
151	lender, claimant or museum identified in a written agreement.

152	This chapter shall not preclude a museum from using any other statutory or judicial
153	method of establishing or perfecting title to property in the museum's custody.

**SECTION 2.** A museum holding property on loan as of the effective date of this act shall be subject to chapter 200B of the General Laws.